

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUEL AUTOMATION STATION, LLC,
Petitioner,

v.

FRAC SHACK INC.,
Patent Owner.

Case IPR2017-01349
Patent 9,346,662 B2

Before BEVERLY M. BUNTING, JAMES A. WORTH, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

DECISION
Denying *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Fuel Automation Station, LLC (“Petitioner”) filed a Petition for *inter partes* review of claims 1–12 of U.S. Patent No. 9,346,662 B2 (Ex. 1001, “the ’662 patent”). Paper 2 (“Pet.”), 1. Frac Shack Inc. (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). The Petition asserts that claims 1–12 of the ’662 patent are unpatentable. Pet. 19, 61–64 (addressing claim 12). After the Petition was filed, claim 12 of the ’662 was disclaimed. Ex. 2001 (disclaimer filed Aug. 31, 2017); Prelim. Resp. 62. We will treat the Petition as directed to claims 1–11, and will not discuss claim 12 further. *See Facebook, Inc. v. Skky, LLC*, Case CBM2016-00091, slip op. at 4–8 (PTAB Sept. 28, 2017) (Paper 12) (holding that statutory disclaimer filed after the Petition but prior to a Decision on Institution requires treating disclaimed claims as though they never existed).

Institution of an *inter partes* review is authorized by statute only when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. For the reasons set forth below, we conclude that the information presented in the Petition fails to establish a reasonable likelihood that Petitioner will prevail in showing the unpatentability of claims 1–11. Accordingly, we decline to institute an *inter partes* review.

A. Related Matters

Petitioner and Patent Owner identify the following pending district court matter involving the ’662 patent that would likely affect, or be affected by, a decision in this proceeding: *Frac Shack Inc. v. Atlas Oil Co. and Fuel*

Automation Station, LLC, No. 16-cv-02275-STV (D. Colo. filed Sept. 9, 2016). Pet. 1; Paper 4, 2.

B. The '662 Patent

The '662 patent discloses a fuel delivery system “for reducing the likelihood that a fuel tank of equipment at a well site during fracturing of a well will run out of fuel.” Ex. 1001, Abstract. According to the Background of the '662 patent, conventional filling of equipment at a well site requires manually discharging fuel “into each fuel tank one after the other.” *Id.* at 1:10–14.

Figure 1 of the '662 patent is reproduced below:

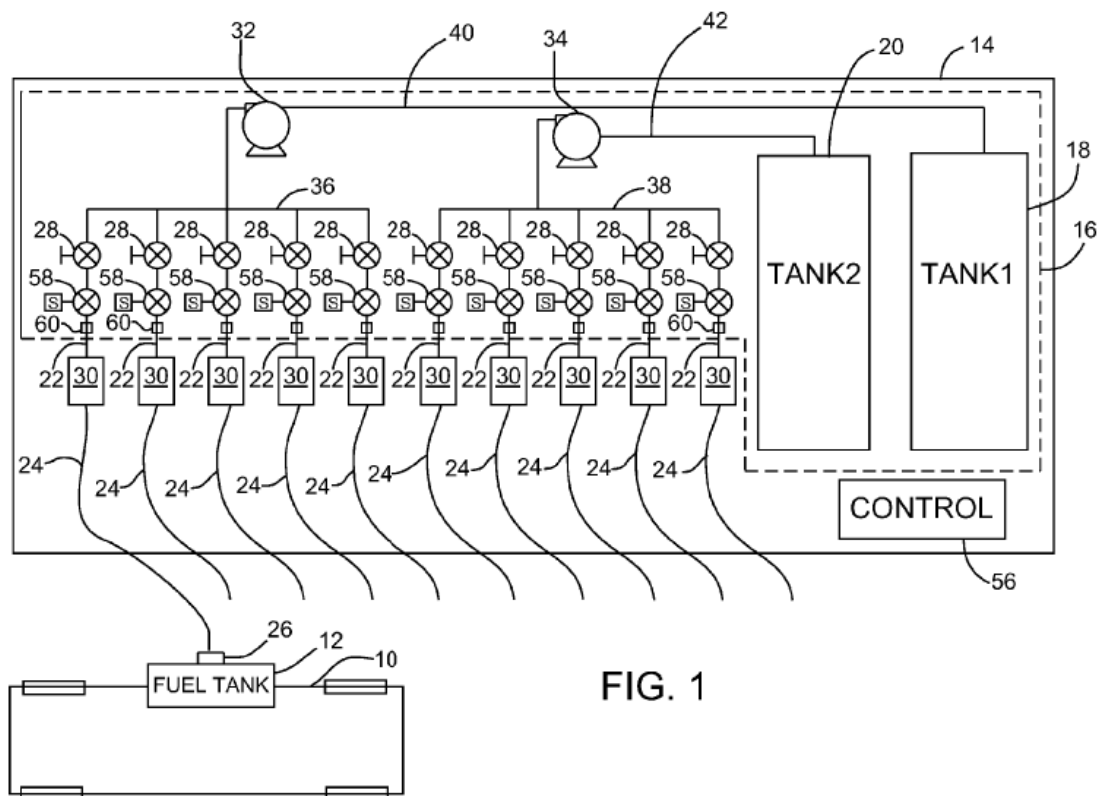


Figure 1 shows fuel delivery system 14 for delivery of fuel to multiple fuel tanks 12 of “multiple pieces of equipment 10 at a well site during fracturing

of a well.” *Id.* at 2:29–30. Fluid delivery system 14 includes fuel source 16, which includes fuel storage tanks 18, 20, with each tank having plural fuel outlets 22. *Id.* at 2:35–41. Hoses 24 connect fuel outlets 22 to fuel cap or fuel head 26 on respective fuel tanks 12 for delivery of fuel to fuel tank 12. *Id.* at 2:41–44.

Each fuel cap 26 includes fuel level sensor 54, which communicates with control station or controller 56 located on trailer 14. *Id.* at 3:37–44. Controller 56 opens electrically operable valve 58 located on each fuel outlet 22, and starts fuel flow to tank fuel 12 when sensor 54 sends a low fuel level signal to controller 56. *Id.* at 4:31–49.

C. Claims

Claim 1 is the only independent claim and is reproduced below:

1. A fuel delivery system for fuel delivery to multiple pieces of equipment at a work site, comprising:
 - a fuel source comprising one or more manifolds, the one or more manifolds being connectable to a fuel supply;
 - each manifold of the one or more manifolds having multiple fuel outlets, each fuel outlet of the multiple fuel outlets having a hose connection;
 - plural hoses, each hose having a first end and a second end and being connected at the first end of the hose to a corresponding one of the multiple fuel outlets and having a fuel delivery connection at the second end of the hose for securing the second end of the hose to a corresponding one of the multiple pieces of equipment to which fuel is to be delivered;
 - an electrically operable valve responsive to electronic control signals on each fuel outlet;
 - a sensor associated with each combination of fuel outlet, hose and fuel delivery connection, each sensor being configured to detect a low fuel condition associated with each of the multiple pieces of equipment to which fuel is to be delivered;

a controller responsive to signals supplied from each sensor through respective communication channels, the controller being configured to provide control signals to open and close the respective electrically operable valves; and

in which the controller is responsive to the detection of the low fuel condition, to display an indication of the low fuel condition or to open at least one of the electrically operable valves for each of the multiple pieces of equipment that is associated with the low fuel condition.

Ex. 1001, 8:52–9:15.

D. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–11 based on the following grounds (Pet. 19):

Reference(s)	Basis	Challenged Claims
Toshio ¹ and Griswold ² or Hose Handbook ³	§ 103	1–7, 9, 10, 11
Toshio, Griswold or Hose Handbook, and Witter ⁴	§ 103	3
Toshio, Griswold or Hose Handbook, and Lohmann ⁵	§ 103	4, 5

¹ JP 2003002400A (pub. Jan. 8, 2003) (Exs. 1003, 1004). We will cite to an English translation of Toshio provided by Petitioner. *See* Ex. 1004.

² U.S. Patent No. 599,702 (issued Mar. 1, 1898) (Ex. 1005).

³ *Hose Handbook*, published by Rubber Manufacturers Assoc., Inc. (7th ed. 2003) (Ex. 1006).

⁴ U.S. Patent Pub. No. 2008/0313006 (pub. Dec. 18, 2008) (Ex. 1028).

⁵ WO 2009/068065 A1 (pub. June 4, 2009) (Ex. 1009).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.